

United States Bankruptcy Court
Northern District of New York

26

In the matter of:

Case Number: 01-90027

TONI F. NATALIE,

Location: Albany, NY

Debtor.

Date: 2/26/02

KEITH RANIERE,

Plaintiff,

Time: 9:00 a.m.

- against -

TONI F. NATALIE,

Defendant.

TRIAL
BEFORE THE HONORABLE ROBERT E. LITTLEFIELD
UNITED STATES BANKRUPTCY JUDGE

Appearances:

CHRISTIAN DRIBUSCH, ESQ.
Dwyer & Dribusch
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Albany NY 12204

Counsel for Debtor

JAMES P. TRAINOR, ESQ.
Cutler, Trainor & Cutler, LLP
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Malta NY 12020

Counsel for Plaintiff

LESLIE APPLE, ESQ.
Whiteman Osterman & Hanna
1 Commerce Plaza
Albany NY 12207

Counsel for Plaintiff

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ALBANY, NY

Courtroom Deputy:

Ms. Beth Wolf

Electronic Recording Officer:

Ms. Theresa O'Connell

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Wynantskill, New York 12198
518-283-8888
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1 question.

2 Q Who is Pamela Kafritz?

3 A Pamela Kafritz is a friend of mine and my roommate.

4 Q Who is Karen Onteriner?

5 A Karen Onteriner is also a friend of mine and lives
6 with us as well.

7 Q Do you recollect on August 2, 1999 standing in
8 front of the business, National Health Outlet for
9 five hours?

10 A No, I do not.

11 Q Do you recollect that the police department came by
12 and told you to move?

13 A No, I do not.

14 MR. TRAINOR: Your Honor, this is well
15 beyond direct.

16 MR. DRIBUSCH: Credibility, your Honor.

17 THE COURT: Overruled, Mr. Trainor. Subject
18 to renewal.

19 Q Do you recollect ever going to Ms. Natalie's house
20 and delivering a box of chocolates with a mother
21 and child on it and flowers?

22 A Yes, I do recollect bringing Toni candy and
23 flowers.

24 Q Okay. Do you recollect a Trooper --

1 A Although I don't recall the date of when I went to
2 her house with the candy and flowers.

3 Q Do you recollect Kevin McMahon, a Trooper Kevin
4 McMahon stopping by and speaking to you concerning
5 that?

6 A I've never met or spoke to Kevin McMahon - -
7 Officer Kevin McMahon.

8 Q You don't recollect filing a complaint against Mr.
9 McMahon?

10 A I recollect filing a complaint against Mr. McMahon,
11 but never spoke to him or met him personally. He
12 came to my - -

13 Q Why would you file a complaint against Trooper
14 McMahon if you've never met him or spoke with him
15 personally?

16 A Because he came to my place of residence and
17 threatened my roommates.

18 THE COURT: Where are we going with all of
19 this, Mr. Dribusch?

20 MR. DRIBUSCH: Simply credibility, your
21 Honor. I'm just arguing this proceeding.

22 THE COURT: Credibility in what sense, as
23 regards to the Trooper and the complaint and
24 not the complaint - -

1 MR. DRIBUSCH: The relationship between ms.
2 Keefe and Ms. Natalie. Having said that, given
3 the minimum amount of evidence that we have in
4 at this point, through this particular witness,
5 I suppose, I don't need to ask that many more
6 questions with respect to impeachment.

7 THE COURT: Let's go on and then if Mr.
8 Trainor has an objection, I'm sure he'll make
9 it.

10 MR. DRIBUSCH: Actually, your Honor, given
11 the light of where we are on this point of this
12 particular case, I have no further questions.

13 THE COURT: Mr. Trainor, do you have
14 anything else?

15 MR. TRAINOR: Yes, your Honor, just
16 briefly. We would like to offer Plaintiff's 23
17 into evidence. I understand that there may be
18 a relevancy objection. I think we've
19 highlighted the points that are relevant for
20 the Court's consideration and we would move it
21 into evidence.

22 THE COURT: 23 is the?

23 MR. TRAINOR: Asset purchase agreement.

24 THE COURT: Mr. Dribusch?

1 MR. DRIBUSCH: First of all, your Honor, I
2 think this is redirect and not introducing it
3 into evidence. If they wanted to introduce it
4 into evidence they should have done so before.
5 Having said that, this is a transaction between
6 two non-debtor corporations which has no
7 relevancy with respect to this because the
8 statute talks about the Debtor's transactions,
9 not the two non-debtor transactions.

10 THE COURT: As your first point, Mr.
11 Dribusch, you're absolutely correct, that
12 procedurally it would not be proper to offer an
13 exhibit on redirect. However, this Exhibit as
14 I look at it is not particular to this witness.
15 We could excuse this witness and then I could I
16 think Mr. Trainor could offer the exhibit. So
17 in that sense I'm going to deal with it now. I
18 can't say, Mr. Dribusch, as a matter of law
19 that there is absolutely no relevance to this
20 document. So on that basis I'm going to
21 receive it. However, the Court will ascribe
22 whatever amount of relevance it deems
23 appropriate, however minimal or however great.
24 I can't say as a matter of law there's

1 absolutely no relevance. So on that basis your
2 objection is overruled and it's received.
3 (Plaintiff's Exhibit 23 is received in
4 evidence)

5 MR. TRAINOR: Thank you, your Honor.

6 THE COURT: Now, you literally have further
7 questions of this witness, Mr. Trainor on
8 redirect?

9 MR. TRAINOR: No, not at this point.

10 THE COURT: Ma'am, you may step down.
11 Thank you very much. Next witness, Mr.
12 Trainor?

13 (Witness excused)

14 MR. TRAINOR: If I may consult, your Honor,
15 for just a moment?

16 THE COURT: So you're resting your case?

17 MR. TRAINOR: We are, your Honor. As I
18 indicated I want to recall Christen Keefe at
19 the close of Mr. Dribusch's case, but it will
20 be for summing up the evidence.

21 THE COURT: You can recall her for rebuttal
22 testimony, Mr. Trainor or impeachment, but you
23 can't bring her back for further direct.

24 MR. TRAINOR: It's not to give evidence in

1 chief, your Honor, it's just to assist me in
2 highlighting for the Court the evidence that's
3 already been received. It will be part of our
4 closing.

5 THE COURT: Mr. Trainor, when we get to
6 closing, that's going to be your show. If you
7 have something more for this witness to offer
8 now as part of your direct case, then we can
9 hear from her now. But once you shift, if she
10 has something to impeach she may do that. If
11 there's rebuttal evidence she may do that. But
12 that's as far as we go. So, if you have
13 something more to elicit from this witness as a
14 part of your direct case then it's now, but not
15 later.

16 MR. TRAINOR: I understand. Could we have
17 five minutes?

18 THE COURT: Mr. Dribusch, do you have a
19 problem taking a brief recess?

20 MR. DRIBUSCH: I suppose so. I guess on
21 that instance I can call my other witnesses.
22 They are suppose to be here ta 3:00 and 3:30.
23 So, perhaps I can get them to come up sooner.
24 I'm going to have also Ms. Natalie and some

1 problems with Mr. Raniere necessitated her working
2 through her attorney; is that what you stated?

3 A Ah, yes.

4 Q Also you stated in that report that at the time of
5 inspection Ms. Natalie stated that her former
6 business partner was responsible for the loss of
7 her facility in Clifton Park, New York, as well as
8 the disruption of business at 4446 Philadelphia
9 Street or Phila Street; is that what you said?

10 A I don't believe I did say that specifically.

11 Q Is that not in your report?

12 A Would you point it out to me, please?

13 Q Please look at page 3 of your report, the very last
14 paragraph.

15 A Yes, basically.

16 Q And you also wrote down that she stated that the
17 State and local police departments are involved in
18 the matter, right?

19 A That is what I was told.

20 Q Did Ms. Natalie also state that she recently
21 secured the assistance of a business manager;
22 right?

23 A That is what I was told.

24 Q And she was hopeful that the problems would be in

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2 Keefe and Ms. Natalie. Having said that, given
3 the minimum amount of evidence that we have in
4 at this point, through this particular witness,
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1 Q And to whom do they make the payments?

2 A Sales Tax.

3 Q Has Zylos ever made payments to Toni Natalie
4 individually?

5 A No, we've never given her any money.

6 Q Did Zylos purchase any assets from National Health
7 Outlet?

8 A Yes.

9 Q Do you recall what those assets were?

10 A There were dishes and you know, things that were
11 not on the leases.

12 Q There came a point in time that you moved from
13 Saratoga to Rochester?

14 A Yes, I did.

15 Q Could you tell us why you moved?

16 A Because I was being harassed by Mr. Ranieri and my
17 husband had a heart attack in '99 which was his
18 third open surgery and I had to get him away from
19 this pressure.

20 MR. TRAINOR: Objection.

21 THE COURT: Basis?

22 MR. TRAINOR: Irrelevant. It's irrelevant
23 to this proceeding.

24 THE COURT: Overruled.

1 A That means I can answer it?

2 Q Continue to answer, please.

3 A Yes. We moved out to relax and enjoy life and all
4 this went on and he sent police to our house and
5 phone calls. He spent a whole hour threatening me
6 on the phone. I wasn't going to have my husband
7 die over this. So I said we're getting out. It
8 cost us a fortune to move because we hadn't even
9 been there two years. He threatened me and my whole
10 family.

11 MR. DRIBUSCH: May I consult with my client
12 for a moment, your Honor?

13 THE COURT: Yes.

14 Q Ms. Schneier did you assist Ms. Natalie in the
15 production of documents that were requested by Mr.
16 Levine?

17 A For bankruptcy?

18 Q For the bankruptcy.

19 A Well we went through all the paperwork and whatever
20 was relevant we took out and got ready.

21 Q What kind of documents did you provide?

22 A Taxes, you're talking about Levine the lawyer?

23 Q Correct.

24 A I sent him personally myself through the mail, 33

1 boxes of material.

2 Q Okay. What was in that material?

3 A Well, it was a lot of customer things and bills
4 that we had paid off, credit cards, all her
5 personal checks, all her business personal checks.
6 I kept everything in really good order and I had
7 long boxes, in fact you have pictures some place
8 here that I wrote on there that these were personal
9 checks and business checks, originals and they
10 should be returned to us. We've never got any of
11 our discovery back, not one piece of it. They
12 still have it.

13 Q Who has it?

14 A Mr. Ranieri, Nancy, Karen, Christen.

15 Q It was never returned to us.

16 A I'm sure they've been for two years shifting
17 through it.

18 MR. DRIBUSCH: No other questions your
19 Honor.

20 THE COURT: Mr. Trainor, any questions?

21 MR. TRAINOR: Just a few.

22 CROSS EXAMINATION

23 BY MR. TRAINOR:

24 Q First of all, you talked about some artwork that

1 MR. DRIBUSCH: Thank your, your Honor.

2 CROSS EXAMINATION

3 BY MR. DRIBUSCH:

4 Q Do you recall why Ms. Natalie advised you that you
5 should contact her attorney?

6 A She advised she was having some business problems
7 and that everything was in the hands of her
8 attorney and that nothing was being done without
9 his approval.

10 Q So she indicated that she was having some problems
11 with her business partner?

12 A She advised me she was having some problems with a
13 person in the business.

14 MR. TRAINOR: Objection, hearsay, your
15 Honor.

16 THE COURT: Sustained.

17 MR. DRIBUSCH: Am I allowed to respond to
18 that objection before you sustain it your Honor
19 or am I not?

20 THE COURT: Sustained, Mr. Dribusch.

21 Q Exhibit 17 is your report, Mr. Gladding?

22 A I believe this is Exhibit 13.

23 Q Okay. But in that report you state that Ms.

24 Natalie stated that her business and personal
